

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1461 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KALUJI D RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR P M Raval with Mr HARIN P RAVAL for Petitioners
Mr Arun Oza, GOVERNMENT PLEADER for Respondent No. 1
Mr J V Japee for respondent no.7
NOTICE SERVED BY DS for Respondent No. 8

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 24/11/2000

C A V. JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

The petitioners have filed this petition for appropriate writ of direction for quashing and setting aside the impugned notifications dated 20.11.1998 and 15.1.2000 issued under sections 4 and 6 of the Land Acquisition Act (for short, 'the Act'), which are annexed at Annexures 'A' and 'B' respectively. The petitioners have further prayed to restrain the respondents, their agents and servants from taking any further action pursuant to the aforesaid notifications Annexures 'A' and 'B' and to restrain the State Government and its servants and agents by permanent injunction from acting upon the aforesaid notifications.

2. The facts may be briefly stated as follows:

The respondents decided to construct a road at the disputed place which would pass through the lands of the present petitioners bearing survey nos. 115, 114, 110 and 109 etc. Thereafter, the Government changed its decision and decided to construct the road on the southern side of the aforesaid alignment and the alternative road, so proposed, would pass through lands bearing survey nos. 153,154,155, 152 etc. Thereafter, there was some representations made to the Government and the Government again changed the decision and decided to construct the road as per the original decision according to which the road shall pass through land bearing survey nos. 115, 114, 110 and 109 etc.

3. Being aggrieved by the said decision of the respondents, the petitioners have preferred this petition for the aforesaid reliefs. They have mainly contended that the decision taken by the respondents to construct the road at the disputed place has been taken at the intervention of respondent No.7, who is a sitting MLA of Himatnagar area. That this decision has been taken without applying mind and, therefore, it may be held that this decision has been arrived in malafide exercise of powers solely on account of the intervention of the sitting MLA-respondent no.7 of Himatnagar. The petitioners also stated that there is alternative alignment at which the road can be constructed. This was shown to the respondents and the respondents had agreed in past to construct the road at the said place. It is

stated that the new Government was formed and the new Government, soon after taking over, changed the decision and decided to construct the road at the disputed place. Therefore, their decision was arrived at in malafide exercise of powers and there is complete non-application of mind. It is further contended that alternative roadline is much better and if the road is constructed there, it would be usable round the year. That the disputed road alignment is such that there would be accumulation of water as the road passes through the river and, therefore, the road, if constructed at the disputed place, would not be usable round the year. That the budgetary provision has been made for construction of road on the alternative place, and therefore, the State Government can continue with the said project to construct the road at the alternative place. That therefore, the petitioners have challenged the aforesaid decision of the State Government to construct the road at the disputed place. Since the State Government has stuck to the said decision, the petitioners have preferred this petition for the aforesaid relief. The petitioners have also submitted so many documents along with the petition. The respondents have also filed affidavits-in-reply to the averments made in the petition. Respondent no.7 has also filed affidavit, in order to explain his position as he has been personally joined as respondent no.7 to the petition.

4. On receipt of the petition, notice was issued and affidavits have been filed on behalf of the respondents which have been taken on record.

5. We have heard the learned Advocates for the parties and have perused the papers. It may be stated at the outset that M/s. P M Raval & Harin Raval, learned Advocates for the petitioners have extensively argued the matter to a considerable length, mainly concentrating on the issue of malafide and non-application of mind on various grounds. It is, therefore, necessary to deal with these two major issues while deciding the present petition. M/s. Raval and Raval have argued that the present decision to go for acquisition of the lands of the petitioners has been taken in malafide exercise of powers and for this purpose, they have referred to certain correspondence which is on record. It is contended by them that initially, the road was decided to be constructed on the lands which are on the southern side of the present alignment. That the local MLA, Shri Ranjitsingh Chavda submitted a letter dated 18.3.1996 to late Shri Savjibhai Korat, who happened to be the Minister-In-charge of Road and Building department. The

R & B department, has, therefore, submitted that as soon as the late Minister received the aforesaid representation from the Sitting MLA Shri Ranjitsingh Chavda, Respondent no.7 herein, the alignment was changed and instead of going for construction of the road on the southern side of the present alignment, the Late Minister decided to go for acquisition of the lands in question and to construct road on that alignment without any enquiry as to the suitability or feasibility of the present alignment and therefore, it is clear that the said decision has been tainted by the influence of the present MLA, Shri Ranjitsingh Chavda, who is joined as respondent no.7 in this petition. That it is, therefore, a clear case of malafide exercise of powers on the part of that Minister at the relevant point of time.

6. The facts are not seriously in dispute. It is a matter of record that a decision was taken to go for construction of road on the southern side of the present alignment and, thereafter, a representation was made by respondent no.7 Shri Ranjitsingh Chavda, who happened to be the Member of Legislative Assembly from Himatnagar Constituency. The representation was made on 19.3.1998, a copy thereof has been placed at Annexure 'F' to page 73 of the petition. There, it has been mentioned that there is a contemplation to construct the road known as 'Vasna Kadodari-Hamirpura' road having a length of 5 kms. That because of certain dispute, the road has not been completed and road in a length of 1125 metres only has been left untouched. Therefore, it was required to be completed. It has been contended that the aforesaid decision was taken to construct the road as per the present alignment which is in dispute in this petition, when Late Shri Savjibhai Korat was Minister of State and Shri Narottambhai was Cabinet Minister. That thereafter, there was change in political scenario and, therefore, that decision was changed and as per the new decision, the road which is now sought to be constructed is to the south of the present alignment. That therefore, the said decision should be changed and the road should now be constructed as per the original decision. Admittedly, if the road is to be constructed as per the original decision, then, it would be as per the disputed alignment. It appears that the late Minister has made an endorsement that the work should be commenced and it may be done as per the original decision, meaning thereby that the road should be constructed at the disputed place. M/s. Raval & Raval have argued at length that though there was a decision to construct the road on the southern side of the present alignment, the said decision has been changed at the intervention of respondent no.7

and without any enquiry into the matter, the decision has been changed which clearly shows non-application of mind and malafide exercise of powers on the part of the respondent Government. At the same time, it is required to be considered that the original decision was to construct the road at the disputed place. There is absolutely no dispute between the parties with respect to the said aspect of the case. It is a matter of record that there was some negotiations and some discussions between the leaders of the area as well as with the Ministers and Officers of the Government. On account of such discussions, some agreement was arrived at and as per the said agreement, new road was to be constructed to the south of the present alignment. The fact remains that the original decision was to construct the road at the disputed place and that alignment was changed at the intervention of MLA Shri Shankarji. There is no dispute about the same. This means that the second decision was taken at the intervention of the MLA and the second decision was again changed and it was reverted to the first decision at the intervention of respondent no.7. In the above view of the matter, it is clear that when the first decision was for construction of road at the disputed place and when it was changed at the intervention of the MLA, then the respondent Government would not be unjustified in reverting to the original decision. If there was some representation submitted to the State Government on the part of the MLA, i.e. respondent no.7, it cannot be said to be a malafide exercise of powers when the decision was changed and the alignment was also changed.

7. It has, thus, been contended that this amounts to malafide exercise of powers and non-application of mind since it is a matter of record that when the decision was earlier changed the expert opinion was obtained and it was in favour of the alternative alignment which is on the southern side of the disputed alignment. In the present decision, no such expert opinion was obtained and straightaway, it was directed to construct the road at the disputed place. In other words, the original decision was for construction of road at the disputed place. The second decision was for construction of road on the southern side of the disputed road and the third decision was again to construct the road at the disputed place which is to the north of the alternative road alignment. Therefore, it is required to be considered whether this can be treated to be a malafide exercise of powers on the part of the State Government.

8. Here it is to be considered that respondent no.7

himself had not moved in his personal capacity but in his capacity as the sitting MLA of the area concerned. The fact remains that he had received a written communication dated 18.3.1998 from the Sarpanch of Chandrani Group Gram Panchayat stating that the alignment was wrongly changed and, therefore, the work could not be completed and it was not being put to use. It is also contended in the said communication that the original alignment i.e. the alignment in dispute would be completed at less expenses and even this High Court had also recognized the said passage and, therefore, the said work should be completed. The said communication is placed at Annexure 'D' at page 69 to the petition. On the aforesaid written communication, respondent no.7 moved the Late Savjibhai Korat. Therefore, it cannot be said that respondent no.7 has misused his position and the same way it cannot be said that even Late Shri Savjibhai Korat had misused his position and acted in malafide exercise of powers.

9. Then, it is to be considered that the decision was to construct the road at the present disputed position which was changed to another alignment on the southern side and then it was reverted to the present alignment, which is not in dispute in this matter. This shows that the initial decision was to construct the road at the disputed place. For this purpose, it has been made clear that the site was properly seen, verified and examined and after due consideration, it was decided to construct the road at the disputed place at the first instance. It, therefore, can be said that when respondent no.7 submitted a written representation to late Shri Savjibhai Korat on 19.3.1998, the Government had readymade material available with it with respect to the present road alignment including the length of the road, the width of the road, the probable expenses to be incurred for the construction of the road, material about land to be acquired for the purpose of widening the road etc. Therefore, relevant materials were available with the Government at that point of time, since there was already a decision to construct the road at the position. It can be said that the competent authority and the State Government must have considered the said materials lying before them while changing the decision of constructing the road at the disputed place. It was therefore, not necessary for the present respondents to call for fresh materials for fresh opinion of experts in order to change the decision. In other words, simply because fresh report was not called for and new materials were not collected, it cannot be said that late Shri Savjibhai Korat acted with malafide intention and there was non-application of mind with respect to the said

representation dated 19.3.1998 presented to him by respondent no.7. It can also not be said that as soon as the representation was submitted on 19.3.1998, late Shri Savjibhai Korat changed the alignment without application of mind and without having even materials before him. In fact, it is not possible to make out as to on what date the endorsement was made by Late Shri Savjibhai. The said representation is dated 19.3.1998 and, even if the endorsement was made on the same day, it cannot be said that the Government had no materials before it to decide as to what would be the proper alignment and which would be the proper place to construct the road. Therefore, from this angle also, the action of the Government cannot be said to be malafide.

10. It has, then, been contended that there is non-application of mind at the stage of section 5(A) of the Act. For the said purpose, M/s.Raval & Raval, have pointed out certain remarks offered by the concerned departments in Form 'D' to be prepared under Section 5(A) of the Act. In fact, this form was shown by the learned Government Pleader for showing that even there was application of mind, at the stage of section 5(A) of the Act. However, M/s.Raval & Raval have pointed in para 14 of the said Form which shows that the Government had sanctioned Rs.15.5 lakhs for the construction of the road at the alternative place and the work can be undertaken after the completion of land acquisition work and after the allotment of funds for the said construction. Mr P M Raval, learned Sr.Counsel has argued for the petitioners that this is a wrong noting or wrong remark, inasmuch as there was no need to acquire any land since the owners of the land through which the said road would pass, have sacrificed their lands. The facts at present are different. It is an admitted position that one of the land holders has filed a suit objecting to the acquisition of the said land, therefore, it cannot be said that the said remarks were false. It has to be considered that at least one person who had earlier agreed to sacrifice his land is now not agreeable to sacrifice his land. Then the Government has to go for compulsory acquisition of the said land in accordance with the Act. Therefore, the remarks recorded therein cannot be treated to be false. Even with respect to the provisions of funds, it is true that the said fund was sanctioned in the past but the concerned department can use the said amount of Rs.15.5 lakhs only if the said fund is ultimately placed at the disposal of the said department. Therefore, that remark also cannot be said to be false. Even otherwise, this is not the final decision recorded by the competent authority under

section 5A. This appears to be a note prepared by the concerned departments for the purpose of enabling the competent authority to decide the issue under section 5A of the Act. The report under section 5-A is made by the acquiring body as well as by the Land Acquisition Officer, after affording opportunity of personal hearing to the petitioners as well as their Advocates and, therefore, it cannot be contended that there was non-application of mind in considering the objections raised by the petitioners.

11. M/s. Raval & Raval have time and again argued that it is more convenient to construct the road at the alternative place, instead of at the disputed place. It is their contention that if the road is constructed at the disputed place, then one has to pass through the river and it would be difficult to use this road during monsoon. It is, therefore, their submission that it is very convenient to have a road at the alternative alignment so that it can be used all through out the year. After all the State Government is the final authority to decide as to where the road should be constructed. The department has decided to construct the road at the disputed place after taking into consideration the technical opinion which already existed on the record. Therefore, it cannot be said that the said decision is taken in malafide exercise of powers and there was non-application of mind.

12. Moreover, it is to be seen that so far as the present alignment is concerned, it is indisputable in this petition that the road will be constructed in a small amount of Rs.6 lakhs or less. This includes the amount of compensation to be paid to the owners of the land. On the other hand, the expenditure for the alternative road would be Rs.15.5 lakhs. Moreover, it is a matter of record that the road at the disputed place will be constructed on the aid to be received from the World Bank. There is no serious dispute about the same. No such aid is sanctioned for the road to be constructed at the alternative place. This would be a great loss to the State Government since the State Government would not get World Bank fund if the road is not constructed at the disputed place. One more difficulty according to the respondents is that at the alternative place six Nalas are required to be constructed for the construction of the road for the passage of water. No such Nalas are required to be constructed at the disputed place. Moreover, it is a matter of record that though the new road would pass through the river, considering the average rainfall and the maximum rainfall in a particular

year, there is no heavy accumulation of water as stated by the respondent so as to block road during monsoon. Therefore, this apprehension voiced by the petitioners is without any foundation and there is nothing on record to show that the road as per the present alignment is likely to be blocked on account of accumulation of water during monsoon. On the other hand, the respondents have clearly stated that the rainfall is not heavy and there is no heavy accumulation of water at the place in question and, therefore, accumulation of water is not likely to block the road at any point of time. Even the learned Government Pleader has made it clear that even when the road is constructed at the disputed place, it would be possible for the people at large to make use of the road round the year.

13. Another aspect of the case is that so many people of so many villages will be in a position to use this road and, hence it would be very beneficial to more number of persons and it would be in the interest of the State and also in the interest of people at large to construct the road at the disputed place. This argument has great deal of force since the road is required to be constructed for the benefit of the people at large.

14. It is to be seen that the aforesaid road alignment at the disputed place was sanctioned as back as in September, 1992 even the possession of land was taken by mutual consent from many land holders and the road, to a great extent, has already been constructed by the respondents. This shows that the petitioners have come late to the court and this delay must defeat their cause. As said above, at the disputed land, road was sanctioned in September, 1992 and the alternative alignment was considered in May, 1994. This shows that when the previous Government decided to construct the road in 1992 with a particular alignment, the decision was changed in 1994 at the intervention of the concerned Member of the Legislative Assembly and again it was changed at the intervention of respondent no.7, who did it at the instance of the representation received from Chandrani Group Gram Panchayat referred to hereinabove.

15. It has also been contended that the road at the disputed place is already in existence to a great length. However, the road is required to be widened to some extent and, therefore, the necessity to acquire the land would be of a very limited area. Moreover, the said road would be a straight one whereas, the alternative road would be a zigzag and uneven road as stated by the respondents. Even from the maps shown to us, it can be

gathered that the road at the disputed place would be a straight one and the road at the alternative place would be in a zigzag condition.

16. The process of acquisition of the very same lands in question was challenged in a suit being Regular Civil Suit No.177/1993 by the owner of agricultural lands, bearing survey nos. 8,111,114,115,116, 109, 108 and 165. The plaintiffs of that suit had applied for interim injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure Code. They did not get the same from the Civil Court, then they preferred Civil Misc.Appeal before the District Court being Civil Misc.Appeal no.64 of 1994 under Order 43 of the Code. There also, their appeal was dismissed by the learned Joint District Judge. Being dissatisfied by those judgments and orders, they had approached this court under section 115 of the Code by way of Civil Revision Application no.22 of 1996. Here also they failed as their CRA was dismissed by the learned Single Judge of this Court on 8.5.1996. (D S Solanki v.Executive Engineer, Himatnagar, reported in 1996 (2) GLH 253). With respect to the situation and position of the place at which the present road is proposed to be constructed, the learned Single Judge has observed in para 7 as follows:

"Pursuant to the aforesaid direction, D M Vanker,

Record Keeper, District Inspector, Land Record, Himatnagar, Sabarkantha, has filed the affidavit and has stated that there is government owned 33 feet wide Nalla which is 975 meters land and which is passing through survey nos. 109, 108, 165, 110 and 8. It is also stated by him that he has gone through the village map and from such map it is found that there exists a nalla and such nalla is the government land. He has based thereon, prepared a map and has shown the nalla land in question. Such affidavit is disputed by the plaintiffs by filing reply and by placing reliance upon some letter addressed by District Inspector dated 22nd December, 1995. The said letter appears to have been written by District Inspector without verifying the original record and in the affidavit filed by District Inspector, Land Record, the entire position is explained. The map which is prepared by the aforesaid Officer undoubtedly go to show that there exists a nalla land of different width and such nalla is passing through Survey nos. 8, 104, and 106 beyond which there is river Hatmati. It is the

case of the respondents-defendants that in fact they want to put up construction of the road on this very nalla land and that any order of injunction would cause irreparable injury to the defendants which cannot be compensated in terms of money because with the passage of time there would be escalation of prices of the material for construction of laying road for which finance is already sanctioned, and ultimately by continuance of injunction the object of welfare scheme would be frustrated. Beyond Hatmati river, they have further shown the proposed road which would pass through survey nos. 109 and 110 which is yet not acquired by the government but for which the proceedings may be afoot at any time."

17. Then in para 9, the learned Judge further observed with respect to the extended meaning of Article 21 of the Constitution of India as under:

"It is now well accepted that right to life guaranteed by Article 21 of the Constitution of India, in its wider expansion, also includes the right of the rural people to have each access to their rural areas in all seasons including monsoon. The access to village or the homestead to all rural people is found to be so essential that in absence of permissible access to the village, village people are very often marooned and cut off from the other part of the District or the State during heavy showers or so long as low lying areas are over flooded. The rural masses in passing through untold miseries, very often not even getting the essential articles like food and water for their bare sustenance for days and months together. It is a matter of concern for all and yet trite masses have in the search of better living and earning, or life with physical comforts and luxuries started exodus to urban areas. The inundation of villages in which India was once living and perturbing rise in urban population with no future oriented and scientific planning has given rise to unsurmountable problems such as neglect of agricultural operations, apathy of and hatred for rural life and exploitation of rural masses by few influential and moneyed people after luring of enticing them to cities with hopes of good fortune and thereafter rendering them to a stage

of bonded labour or external toiling tenants of the earth. On the other hand those who have rushed to urban areas have to satisfy themselves by putting up in small zuggies of hutments with no essential amenities of life and have to rest content with sub-human or animal existence. If this exodus of village people or rural masses to the urban areas is to be stopped or discouraged and if urban areas are to be protected against overflowing by or rural people, living amenities of rural masses shall have to be improved. If rural people do not have access to their villages or if other persons from outside cannot have access to their villages when the villages are marooned or over-flooded by rainy water or flood water and when there are no roads by which people can reach the State Highway, they are compelled to live the life of animal existence. In large number of villages basic necessities for life like drinking water, power supply and staple diet are not available. For drinking water womenfolk has to walk for miles together where Government tanker obliges to come at least once or twice a week. No easy access to the village is the excuse given by politicians. It is in this context that easy access to village is regarded as part and parcel of right to life for rural citizens because after passage of more than 48 years of the democracy and Independence of the country, the helpless and hapless life of rural masses even today remain confined and crippled to their villages which have not known and are not likely, nay not supposed to know that their motherland is claiming to take a fast and developing stride towards 21st century. To obviate their difficulties and to achieve the objective underlying Article 21 of the Constitution of India, the State Government has evolved or started the project known as "Rural Road Project" and if under such project, a road is to be laid or constructed, injunctive orders from the courts of law should be a rarity as it frustrates an initial step, through belatedly taken onwards fulfillment of most cherished right to life."

18. The learned Judge had also occasion to refer to a decision of Hon'ble the Supreme Court in the case of H.P.State v. Umed Ram Sharma reported in 1986 (2) SCC 68 with respect to the right under Article 21 of the

Constitution of India in para 11 of his judgment. It would be worthwhile to refer to the observations made in para 11 of the said decision (D S Solanki's case (supra) for ready reference as under:

"In State of H.P. v/s. Umed Ram Sharma, reported in 1996 (2) SCC 68 the Apex Court held that the right to life includes the quality of life as understood in its richness and fullness by the ambit of the Constitution Access to road was held to be an access to life itself in that State. The State was State of Himachal Pradesh which is in the hills and without workable roads, no communication was possible. While extending the concept of 'right to life' as guaranteed by Article 21 of the Constitution of India and in the background of Article 39(2) of the Constitution, the Apex Court held that Right to life embraces and only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. If viewed and understood in the aforesaid perspective all distant, remote and interior rural area of every State must have easy access to their villages through roads which would provide them opportunity to have access to other developed part of the State, to have communication which would further ensure and promote the richness and fullness of life. A clear obligation flows from Article 39(2) of the Constitution which unmistakably desires and expects that the State shall, in particular, endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas. Denial of access to roads would demobilize the rural masses to their villages and would undoubtedly deny to them equal facilities and opportunities which are available to urban. Few Indians live in villages despite undesirable exodus of rural masses to urban area and therefore, if the State Government consistent with its Constitutional obligation envisaged and implemented its "Rural Road Project", the course of law cannot and should not blindly injunct the project."

18.1. So, the petitioners who were plaintiffs in the said suit failed even in prima facie satisfying three courts about their rights on one hand and their difficulty on the other.

19. In the meantime, the State had dropped the idea of prosecuting the proposal ahead. Yet, nevertheless, the facts and the above observations of this court would not be whipped out and the petitioners who were the plaintiffs in the said matter cannot run away from the said decision and observation of this Court.

20. One more aspect cannot be lost sight of. Though this petition was filed by the petitioners, no interim relief was granted and the concerned Land Acquisition Officer has already made an award under section 11 of the Act on 7.4.2000 after following due procedure of the Land Acquisition Act. A copy thereof has also been produced on record at page 263 onwards. There the value of the acquired lands has been assessed at Rs.45,969.00, the amount of solatium has been fixed at Rs.13,791/- and the additional amount at 12% is assessed at Rs.6437/-. Thus the total assessment comes to Rs.66,197/-. The details of the acquired lands are shown at page 267 onwards. This detail shows that this notification covers the present lands in dispute and the State Government has taken final decision to construct road at the disputed place.

21. In the above facts and circumstances the principles laid down in (2000) 2 SCC 48 (supra) would squarely apply to the facts of the present case. There also it is held that when the lands have been acquired and when the final decision has been recorded and when notification for acquisition of land has been published under section 11 of the Act, then in that event, the courts should not interfere with the process in question. Therefore, considering the spirit of this decision, it has to be held that this court must raise its hands in the present matter and should not quash these proceedings. It is more so when the entire process and the final decision do not suffer from non-application of mind or malafides. Suffice it to say that there is absolutely no case for quashing the aforesaid proceedings. The result is that considering the case in its entirety, the petition deserves dismissal and does not warrant interference at the stage by this court. Even the petitioners, being the residents of this area, will also get benefits as and when the road is completed. A few persons have to sacrifice for the larger interest of the public at large. This is the fundamental object for the enactment of the Act.

22. An attempt was made to argue that the petitioners

had raised objections at the stage of Section 5(A) of the Act and one of the objections was that notification under section 4 of the Act was not properly published and it was published in the daily newspapers Prabhat and Loksatta-Jansatta which did not have sufficient circulation in the area in which the lands are situated.

23. On the remark offered by the Land Acquisition Officer in Form 'D', it has been made clear that the notification has been properly published even at the office of the Gram Panchayat. Now, so far as the circulation is concerned, there is no material on record to show that these two newspapers did not have adequate circulation in the aforesaid area and this question of fact cannot be gone into in this petition without any material. Moreover, no material has been placed on record to decide the said issue of fact. It has also been made clear that the department itself does not send the notification for publication directly to the newspaper. That as per the practice, the matter goes to the information department and the information department, thereafter send the said notification to the newspaper. Therefore, it cannot be said that there was malafide intention on the part of the respondents in sending this notification for publication to a particular newspaper. Moreover, as said above, there is nothing on record to show that these two daily newspapers do not have adequate circulation in the area in question. Therefore, this objection could not weigh with the competent authority to any extent.

24. On behalf of the petitioners, it has been further contended that the alternative alignment would be more feasible since the road can be used for all the 12 months in a year. As said above, it is also on record that even the road at the disputed place is likely to be used during the entire year and the respondents have made it clear that there would be no obstacle in the user of the said passage even during monsoon. This has been discussed hereinabove. Therefore, this ground would not help the petitioners. It is next contended that the Government has sanctioned a sum of Rs.15.5 lakhs for the alternative alignment. This amount may not be used for the said purpose. On the other hand, the road at the disputed place can be constructed at lesser expenses and the road also can be constructed by the aid of the World Bank loan. Therefore, the Government may not be required to spend for the said road immediately. This facility will not be available for the alternative alignment.

25. It has also been contended that it is the

consistent policy of the Government to avoid acquisition of agricultural lands. At the same time, when the agricultural lands are required to be acquired then, some persons have to sacrifice in the interest of public at large. It is an admitted position that if the road is constructed at the disputed place, it would be useful to so many village people and therefore, with a view to provide the aforesaid facilities, the petitioners have to sacrifice to some extent. Here, they sacrifice their lands or piece of their lands against the compensation they may receive as per the award. Even if they are not satisfied by the amount awarded to them under the award, then they may be at liberty to refer the matter to the District Court under Section 18 of the Act and the District Court will take care of all aspects of compensation payable to the claimants. Therefore, the petitioners will be required to sacrifice their lands against the probable amount of compensation which may be payable to them. There is no loss as such to the petitioners.

26. It has also been contended that some persons had agreed to give the lands without any compensation if the road is constructed at the alternative place. However, some of them have gone away from the said understanding and even a suit has been filed by one of them to show that they are not agreeable to part with their lands extensively.

26.1. Even apart from the above position, it is a fact that the State Government is the master of the situation and it is for the State Government to decide where the road is to be constructed. If the decision is not arrived in malafide exercise of powers, then the challenge to the decision must fail. It is more so, when the respondents are not shown to have acted on account of non-application of mind.

27. M/s. Raval & Raval have also submitted that the earlier notification was cancelled or withdrawn and no new circumstance has come into play for issuing fresh notification for acquisition of lands in respect of the disputed land. This has been dealt with in the earlier part of the judgment. The fact remains that the original decision was to construct the road at the disputed place which was altered at the alternative place at the intervention of the concerned MLA and thereby there was change in the decision and the original decision was reiterated at the request of respondent no.7. Here respondent no.7 has acted on the strength of the representation received by him from Chandrani Group Gram

Panchayat. So it was not his personal interest in getting the decision changed. Moreover, there is absolutely nothing on record to show that respondent no.7 had some case to grind against the petitioners or against any of them. It, therefore, cannot be said that respondent no.7 has acted in such a way as to take revenge against these petitioners or any of them. It is not shown as to what interest this respondent had in representing to the State Government for the change of alignment. Nothing is shown from the record that respondent no.7 is or was likely to get something by getting the decision changed. His personal interest has not been established. Therefore, it cannot be said that respondent no.7 has influenced the mind of the late Minister in getting the decision changed. He simply conveyed the feelings of the people of that area received through the Chandrani Group Gram Panchayat, to the concerned Minister and the concerned Minister on the basis of materials already existed on the record, found that it was more advantageous to have original alignment for the construction of road at the disputed place. On the said consideration, the Late Minister appears to have changed the decision and reverted to the original decision to construct the road at the disputed place. On this background, it cannot be said that the Government has acted in malafide exercise of powers. It can also not be said that there was non-application of mind.

28. It has also been argued that the Collector has mechanically accepted the reply given by the acquiring body at the stage of Section 5(A) Act. As said above, the information placed on record simply shows that it contains remarks offered by the acquiring body as well as by the Land Acquisition Officer. It does not show as to the reason for the decision arrived at by the Collector. Therefore, it cannot be said that there is material on record to show that the Collector has mechanically accepted the reply given by the acquiring body. Any way, from the records, it does not transpire that the Government has acted in malafide exercise of the powers. It also does not transpire from the record that the present decision to construct the road at the disputed place was arrived at without non-application of mind. Suffice it so say that there is no substance in any of the contentions raised by the petitioners and therefore, there is no merit in the petition. Consequently the petition is required to be dismissed at the admission stage.

29. A decision recently arrived at in the case of Municipal Councillor, Ahmednagar vs. Shah Hyder Beig &

Anr. (2000) 2 SCC 48 has some relevance on the facts of the case before us. There, the writ petition challenging the notification was filed after 21 long years after its issuance and 16 long years from the date of making over possession and passing of award. There it was found that the writ was delayed. Here also the construction of the road has been partly completed long back and the petitioners have filed petition as back as in 2000 A.D. Therefore, there is delay in filing this petition and now the road has been constructed to a great extent and only a strip of road of length of 1125 metres is left to be constructed. In that view of the matter, the present petition further suffers from the element of delay.

30. With respect to the power, right and jurisdiction to acquire property, the State is the sole authority to decide the issue. The State is not expected to act with malafides. Its action is expected to be reasonable. We may refer to a decision of Hon'ble the Supreme Court in the case of NEW REVIERA COOPERATIVE HOUSING SOCIETY v. SPECIAL LAND ACQUISITION OFFICER, reported in (1996) 1 SCC 731 wherein it has been observed as follows:

"Right to shelter is undoubtedly a fundamental right. A person may be rendered shelterless, but it may be to serve a large public purpose. Far from saying that he will be rendered shelterless the Supreme Court did not circumscribe the State's power of eminent domain, even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless. If that contention is given credence no land can be acquired under the Act for any public purpose since in all such cases the owner/interested person would be deprived of his property. He is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, Section 23(2) provides solatium for compulsory acquisition against his wishes. Under those circumstances, it cannot be held that the acquisition for public purpose violates Article 21 of the Constitution or the right to livelihood or right to shelter or dignity of person."

31. In a decision in the case of SRI NRIPATI GHOSHAL v. PREMAVATI KAPUR, reported in (1996) 5 SCC 386, the question of delay in filing the petition objecting the acquisition of a land was considered and it was observed therein as follows:

"Though the acquisition proceedings were initiated after the first writ petition was filed challenging the requisition under the W.B.Act, but the notification under Section 4(1) and the declaration published under section 6 of the Act became final before the High Court passed the order in 1983. Thereby the public purpose, namely; defence purposes, got crystallized before the judgment was rendered by the High Court. The High Court accepting the legal position, quite rightly, had given time to complete the award enquiry and to pass the award. But due to lethargy on the part of the authorities to have the funds made available, award could not be made for non-depositing of the amount. So long as the public purpose subserves, the finding that the acquisition is mala fide is ex-facie unsustainable. No doubt there were laches on the part of the authorities, but so long as the acquisition proceedings were legal and the defence personnel remain in possession of the premises for the defence purpose, the acquisition is for public purpose. Therefore, it cannot be characterized to be mala fide. By the time the second writ petition came to be filed, the acquisition had become final, the award had become final and the compensation was tendered. Under those circumstances, the High Court, without going into the validity in that behalf, was not right in setting aside the acquisition on the specious finding that it was mala fide."

32. We are of the view that the

been in a position to show that there is malafide exercise of powers in arriving at a decision to construct the road at the disputed place by changing the second decision referred to hereinabove. There is also no substance and merit in the contention of the petitioners that the decision suffers from non-application of mind. These are the objections raised before us and we are not satisfied with the submissions and consequently we find no substance or force in the aforesaid contentions. Therefore, this petition is meritless and it deserves to be dismissed at the admission stage itself.

This petition is accordingly dismissed at the admission stage. Notice discharged. No order as to costs.

24.11.2000 [M H Kadri, J.]

[D P Buch, J.]

msp